

REMARKS

Claims 18-37 are now in this application. Claims 1-17 have been canceled.

The examiner has indicated that claims 27 and 28 would be allowable, if rewritten in independent form. Claims 27 and 28 have now been rewritten in independent form including all of the limitations of the base claims.

Claims 35-37 have been objected to as failing to further define the claim from which they depend, because claims 35-37 are method claims and they depend from an apparatus claim. Claims 35-37 have been rewritten in independent form.

Claims 18-26 and 29-37 have been rejected under 35 U.S.C. 102(e) as being anticipated by the US published application of Boecking (US 2006/0144964).

MPEP 706.02(f)(1) sets forth examination guidelines for applying references under 35 U.S.C. 102(e) and states, in part, as follows:

I. DETERMINE THE APPROPRIATE 35 U.S.C. 102(e) DATE FOR EACH POTENTIAL REFERENCE BY FOLLOWING THE GUIDELINES, EXAMPLES, AND FLOW CHARTS SET FORTH BELOW:

(A) The potential reference must be a U.S. patent, a U.S. application publication (35 U.S.C. 122(b)) or a WIPO publication of an international application under PCT Article 21(2) in order to apply the reference under 35 U.S.C. 102(e).

(B) Determine if the potential reference resulted from, or claimed the benefit of, an international application. If the reference does, go to step (C) below. The 35 U.S.C. 102(e) date of a reference that did not result from, nor claimed the benefit of, an international application is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 if the prior application(s) properly supports the subject matter used to make the rejection in compliance with 35

U.S.C. 112, first paragraph. See MPEP § 2136.02. (C) If the potential reference resulted from, or claimed the benefit of, an international application, the following must be determined:

(C) If the potential reference resulted from, or claimed the benefit of, an international application, the following must be determined:

(1) If the international application meets the following three conditions:

- (a) an international filing date on or after November 29, 2000;
- (b) designated the United States; and
- (c) published under PCT Article 21(2) in English,

then the international filing date is a U.S. filing date for prior art purposes under 35 U.S.C. 102(e). If such an international application properly claims benefit to an earlier-filed U.S. or international application, or to an earlier-filed U.S. provisional application, apply the reference under 35 U.S.C. 102(e) as of the earlier filing date, assuming all the conditions of 35 U.S.C. 102(e), 119(e), 120, or 365(c) are met. The subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph, in order for that subject matter to be entitled to the earlier filing date under 35 U.S.C. 102(e). Note, where the earlier application is an international application, the earlier international application must satisfy the same three conditions (i.e., filed on or after November 29, 2000, designated the U.S., and had been published in English under PCT Article 21(2)) for the earlier international filing date to be a U.S. filing date for prior art purposes under 35 U.S.C. 102(e).

*(2) If the international application was filed on or after November 29, 2000, but did **not** designate the United States or was **not** published in English under PCT Article 21(2), do **not** treat the international filing date as a U.S. filing date for prior art purposes. In this situation, do **not** apply the reference as of its international filing date, its date of completion of the 35 U.S.C. 371(c)(1), (2) and (4) requirements, or any earlier filing date to which such an international application claims benefit or priority. The reference may be applied under 35 U.S.C. 102(a) or (b) as of its publication date, or 35 U.S.C. 102(e) as of any later U.S. filing date of an application that properly claimed the benefit of the international application (if applicable).*

Appl. No. 10/566,755
Amdt. dated April 26, 2007
Reply to Office action of Jan. 26, 2007

Boecking is a U.S. application publication. The Boecking U.S. published application is based on an International application filed after November 29, 2000, and the international application was **not** published in the English language. Therefore, the Boecking published application does **not** have a 102(e) date and does **not** qualify as prior art under 35 USC 102(e). See the italicized paragraph, above. Accordingly, the 35 USC 102(e) rejection is improper and should be withdrawn.

Further, Boecking (US 2006/0144964) is not a reference under 35 U.S.C. 102(a), because the publication date of the reference is July 6, 2006, which is after applicants' U.S. filing date of June 9, 2004.

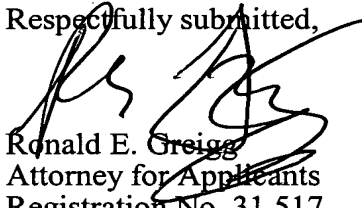
The International application upon which Boecking (US 2006/0144964) is based was published as International Publication No. WO 2004/033891 on April 22, 2004, and is available as a reference under 35 U.S.C. 102(a). To overcome this reference, enclosed is an English translation of applicants' German priority application No. 1 03 35 211.1, which was filed on August 1, 2003, and a statement that the translation of the certified copy is accurate. Accordingly, applicants' are entitled to an effective filing date of August 1, 2003, which precedes the publication date of International Publication No. WO 2004/033891.

The Commissioner is hereby authorized to charge any necessary fees in connection with this communication, including any excess claims fees, to Deposit Account Number 07-2100.

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For all the above reasons, entry of the amendment and allowance of the claims are
courteously solicited.

Respectfully submitted,



Ronald E. Greigg
Attorney for Applicants
Registration No. 31,517
CUSTOMER NO. 02119

GREIGG & GREIGG, P.L.L.C.
1423 Powhatan Street, Suite One
Alexandria, VA 22314
Tel. (703) 838-5500
Fax. (703) 838-5554

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Attachments: Translator's statement
English translation of German priority application No. 1 03 35 211.1

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